In the High Court of Uttaranchal, at

Nainital

A.O. No. 651/2001

(Old No. 10 of 1988)

U.P.S.R.T.C. Lucknow through its

Regional Manager Tanakpur ..... Appellant.

Vs.

1. M/S J.P. and Company owner of Truck No. USZ 4508 through Parmanand, Ex-Brigadier, Ghantakaran Municipal Board, Pithoragarh, District Pithoragarh.

2- Chandra Prakash S/o Uttam Singh, Driver Truck No. USZ 4508 R/o Shildham, Nagar Palika Pithoragarh District Pithoragarh.

3- Vikram Singh S/o Dilip Singh, Cleaner Truck No. USZ 4508 R/o Kalchhin Katia P.O. Makot District Pithoragarh.

4- The United India Insurance Company Haldwani through Branch Manager, District Nainital ... Respondents.

Sri A.N. Sharma, learned counsel for the appellant.
Sri G.B. Pande, learned counsel for the respondents.

Hon'ble B.C. Kandpal, J.

This appeal U/O 43 Rule – 1 C.P.C. has been filed by the U.P.S.R.T.C. against the order dated 21-10-1987 passed by the District Judge, Pithoragarh in O.S. No. 5/1987, U.P.S.R.T.C. Vs M/S J.P. & Company and others.

2- Brief facts of the case are that there was a collision between two vehicles, i.e. Bus belonging to U.P.S.R.T.C. and the Truck No. USZ 4508. The appellant filed a suit before the court of District Judge Pithoragarh and during the pendency of the suit a

Circular Letter was filed by the plaintiff-appellant, showing therein that the Managing Director of the U.P.S.R.T.C. has delegated the power to Regional Manager to bring the suit.

3- The Court below after having perused the document and hearing the learned counsel for the parties, was pleased to observe that the Regional Manager Tanakpur, who had brought the suit before the court below, was not competent to file the suit in the court on behalf of the U.P.S.R.T.C. The court below directed the plaintiff-appellant to file the plaint afresh after removing the defects and accordingly returned the plaint to the plaintiff/appellant.

4- Feeling aggrieved by the aforesaid impugned order dated 21-10-1987, the plaintiff has preferred the appeal before this court.

5- Heard learned counsel for the parties and perused the record.

6- The learned counsel for the respondents has argued that in view of the specific bar provided U/S 110-F of the Motor Vehicles Act, the appellant had no right to file the original suit in the Civil Court. He had a remedy to file the claim case before the Motor accident Claim Tribunal concerned. He has also submitted that in view of the provisions of the Motor Vehicles Act, this appeal U/O 43 Rule- 1 C.P.C. is also not maintainable.

7- Perusal of the record reveal that the appellant by way of the impugned order was directed to file the fresh plaint before the competent court after removing the

defects but the appellant instead of removing the defects and filing the plaint afresh before the competent court, has straightaway approached the High Court by way of the appeal.

8- Having considered the arguments advanced by the learned counsel for the parties as well as taking into account that the appeal has been preferred against the impugned order at a premature stage, I am of the view that the appeal is not maintainable.

8- The appeal lacks merit and is liable to be dismissed.

9- Accordingly the appeal is dismissed. The interim order, if any, shall stand rejected.

(B.C. Kandpal, J.)

Dated: 21-09-2006
ISB